

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

**FILED**

**JAN 30 2018**

Clerk, U.S. District Court  
District Of Montana  
Helena

<b>UNITED STATES OF AMERICA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>TWENTY FIREARMS AND 539 ROUNDS OF MULTI-CALIBER AMMUNITION,</b>  <b>Defendants.</b>	<b>CV 16-64-BU-SEH</b>  <b>FINDINGS OF FACT, CONCLUSIONS OF LAW, DEFAULT JUDGMENT, AND ORDER OF FORFEITURE</b>
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Plaintiff, the United States of America, has moved for an entry of default judgment pursuant to Fed. R. Civ. P. 55(b)(2). Upon considering the pleadings filed herein, the Court hereby makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. On January 23, 2017, Plaintiff, United States of America, filed in this cause its Amended Verified Complaint for Forfeiture *In Rem* (Doc. 2) against the defendant firearms and ammunition, consisting of the following property involved

in a violation of 18 U.S.C. § 922(g)(1), and 18 U.S.C. § 922(a)(1)(A), and subject to forfeiture pursuant to 18 U.S.C. § 924(d):

1. DPMS INC. (Defense Procurement MFG. Services) A15 Rifle  
CAL:223 SN:FH194471;
2. Gunwerks LLC LR-1000 Rifle CAL:.22-243 SN:C2463;
3. Remington Arms Company, INC. 700 AAC-SD Rifle CAL:308  
SN:G7060562;
4. Remington Arms Company, INC. 700 Rifle CAL:300  
SN:S6582620;
5. Savage 111 Rifle CAL:300 SN:J070548;
6. Remington Arms Company, Inc., 700 LH Rifle CAL:270  
SN:A6827688;
7. Ruger Mini 14 Ranch Rifle Rifle CAL:223 SN:187-00787;
8. Stiller's Precision Firearm, LLC (SPF) B-23 Rifle CAL: 6.5  
Creedmore SN:PTG0106;
9. Browning X-Bolt Rifle CAL: 6.5 Creedmore SN:32978ZV354;
10. Winchester 70 Sporter Rifle CAL: 22-250 SN:G2081542;
11. Noble MFG. CO. 70D Shotgun CAL:410 SN: None;
12. Smith & Wesson 657 Revolver CAL:41 SN:BHB5068;
13. Heckler and Koch P2000SK Pistol CAL:40 SN:122-018076;
14. Smith & Wesson M&P 40 Pistol CAL:40 SN:CPD1616;
15. Smith & Wesson M&P 40C Pistol CAL:40 SN:DWS0526;
16. Stiller's Precision Firearm, LLC (SPF) TAC338 G5 Receiver  
CAL: Unknown SN:TB31044;
17. Browning A-Bolt Rifle CAL:300 SN:36307MZ351;

18. TIKKA (OY TIKKAKOSKI AB) T3 Rifle CAL:22-250  
SN:J99220;
19. Winchester 70 Rifle CAL:300 SN:G2461760;
20. Shadow OPS Weaponry, LLC SHDW-15B Rifle CAL: Unknown  
SN:15B-4613.

**Ammunition:** 514 rounds of assorted multi-caliber ammunition; 19 rounds Smith & Wesson 40-caliber ammunition; and 6 rounds Speer 40-caliber ammunition.

2. The Court issued a Warrant of Arrest *in Rem* (Doc. 7) and the defendant property was arrested on February 8, 2017. (Doc. 8).

3. Examination of the Court files and records in this case shows that pursuant to Rule G(4)(b)(v) of the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States provided “direct notice” of this forfeiture proceeding on January 27, 2017, by USPS First Class mail and Certified mail to all known potential claimants: Nolan Barbisan, Chris Kleppen, Danica Lewis, Michael McAulliffe, Mitchell Urdahl, Robert Wilkes, William Lewis, Patrick Pardy, Edward Wasson, Dennis Griffin, and Linda Metcalf, Dustin Butler, David Barbisan, Austin King, Linda Waliser, Sam Wood, and Dennis Gentry, Gentry Custom LLC (Doc. 3,) to the addresses provided by law enforcement.

4. The original mailings for Patrick Pardy, Edward Wasson, and William Lewis, were returned as undeliverable as addressed. An internet search was conducted for the current addresses and on March 3, 2017, the United States provided “direct notice” of this forfeiture action by sending via first-class U.S. mail and certified mail copies of the Notice to Amended Verified Complaint for Forfeiture *in Rem* to Potential Claimant’s New Address (Doc. 12) and Amended Verified Complaint *in Rem* (Doc. 2).

5. The original mailing for Dennis Griffin was returned as undeliverable as addressed. An internet search was conducted for Dennis Griffin’s current address and on April 14, 2017, the United States provided “direct notice” of this forfeiture action by sending via first-class U.S. mail and certified mail copies of the Notice to Amended Verified Complaint for Forfeiture *in Rem* to Potential Claimant’s New Address (Doc. 13) and Amended Verified Complaint *in Rem* (Doc. 2).

6. The original mailing for Linda Metcalf was returned as undeliverable as addressed. An internet search was conducted for Linda Metcalf’s current address and on September 6, 2017, the United States provided “direct notice” of this forfeiture action by sending via first-class U.S. mail and certified mail copies of the Notice to Amended Verified Complaint for Forfeiture *in Rem* to Potential

Claimant's New Address (Doc. 18) and Amended Verified Complaint *in Rem* (Doc. 2).

7. Under Supplemental Rule G(4)(b), although the United States has a duty to send direct notice to potential claimants; it is not required to personally serve potential claimants. *See United States v. \$22,050 in U.S. Currency*, 595 F.3d 318, 320 n.1 (6th Cir. 2010)(explaining that in civil forfeiture cases, because claimants are not defendants, Rule 4 regarding service of process does not apply and the United States is required only to send notice pursuant to Rule G(4)(b)).

8. The Notice of Amended Complaint for Forfeiture (Doc. 3, 12, 13, and 18) sets forth the deadlines for filing a verified claim to the defendant property, and answer or Rule 12 motion as required by Supplemental Rules G(5)(a) and (b). Nolan Barbisan, Chris Kleppen, Danica Lewis, Michael McAulliffe, Mitchell Urdahl, Robert Wilkes, William Lewis, Patrick Pardy, Edward Wasson, Dennis Griffin and Linda Metcalf, failed to file verified claims as instructed in the Notice of Amended Complaint for Forfeiture. Nolan Barbisan, Chris Kleppen, Danica Lewis, Michael McAulliffe, Mitchell Urdahl, Robert Wilkes, William Lewis, Patrick Pardy, Edward Wasson, Dennis Griffin and Linda Metcalf, also failed to file an answer or a motion under Fed. R. Civ. P. 12, within 21 days after the filing

of a claim as required by Supplemental Rule G(5)(b) and as instructed in the Notice of Complaint for Forfeiture.

9. Verified Claims were received from the following:

- On April 3, 2017, a verified claim was received at the U.S. Attorney's Office, from **Dustin Butler**, for the Gunwerks LLC LR-1000 Rifle CAL:22-243 SN:C2463. (Doc 23, ex. 1).
- On February 23, 2017, Counsel for **David Barbisan**, filed a Verified Answer Objecting to Forfeiture for the Remington Arms Company, Inc., 700 LH Rifle CAL:270 SN:A6827688; the Smith & Wesson 657 Revolver CAL:41 SN:BHB5068; and the Browning A-Bolt Rifle CAL:300 SN:36307MZ351. (Doc. 11).
- On February 23, 2017, a verified claim was received at the U.S. Attorney's Office, from **Sam Wood**, for the TIKKA (OY TIKKAKOSKI AB) T3 Rifle CAL:22-250 SN:J99220. (Doc. 23, ex. 2).
- On February 8, 2017, a verified claim was received at the U.S. Attorney's Office, from **Linda Waliser**, for the Noble MFG. CO. 70D Shotgun CAL:410 SN: None. (Doc. 23, ex. 3).

- On February 17, 2017, **Dennis Gentry**, on behalf of Gentry Custom, LLC., filed a verified claim with the Court, for the Stiller's Precision Firearm, LLC (SPF) TAC338 G5 Receiver CAL: Unknown SN:TB31044; Browning A-Bolt Rifle CAL:300 SN:36307MZ351; TIKKA (OY TIKKAKOSKI AB) T3 Rifle CAL:22-250 SN:J99220; and the Winchester 70 Rifle CAL:300 SN:G2461760 for money owed for work completed on each firearm. (Doc. 9).
- **Austin King** contacted the United States' Attorney's Office and asserted a claim to the Ruger Mini 14 Ranch Rifle CAL:223 SN:187-00787. (Doc. 23, para. 2).

15. Service by publication of the forfeiture action pursuant to Supplemental Rule G(4)(a)(iv)(C) was also provided to potential claimants, both known and unknown, by publishing on the government's asset forfeiture web site the Notice of Forfeiture Action for 30 consecutive days, beginning on April 19, 2017, and ending on May 18, 2017. (*See* Declaration of Publication, Doc. 14-1). No claim was filed with the Court within 60 days of the first day of publication by any known or unknown potential claimant, as required by Supplemental Rule G(5)(a)(ii)(B).

16. After the United States moved for the entry of defaults of Nolan Barbisan, Chris Kleppen, Danica Lewis, Michael McAulliffe, Mitchell Urdahl, Robert Wilkes, William Lewis, Patrick Pardy, Edward Wasson, Dennis Griffin and Linda Metcalf, and unknown potential claimants, supported by Declarations (Doc. 17 and 20), the Clerk of District Court entered the defaults of known potential claimants, Nolan Barbisan, Chris Kleppen, Danica Lewis, Michael McAulliffe, Mitchell Urdahl, Robert Wilkes, William Lewis, Patrick Pardy, Edward Wasson, Dennis Griffin, and unknown potential claimants on September 6, 2017. (Doc. 16). The Clerk of District Court entered the default of known potential claimant, Linda Metcalf, on November 17, 2017 (Doc. 21).

17. Dustin Butler, Austin King, David Barbisan, Linda Waliser, Sam Wood, and Dennis Gentry, have executed Acknowledgment of Notices that reflect that they understand that it would be a violation of federal law to deliver, return, or otherwise dispose of firearms or ammunition to Nolan Barbisan, or any person residing with Nolan Barbisan, or any other person who is prohibited by State or Federal law from owning or possessing firearms or ammunition. Dustin Butler, Austin King, David Barbisan, Linda Waliser, Sam Wood, and Dennis Gentry have each signed an Acknowledgment of Notice document. (Doc. 23, ex.s 4-9).



18. On January 12, 2018, Dennis Gentry provided written acknowledgment of payment in full for work completed on the TIKKA (OY TIKKAKOSKI AB) T3 Rifle CAL:22-250, SN: J99220 and the Browning A-Bolt Rifle CAL:300, SN:3630MZ351, and released claim to said firearms. (Doc. 23, ex.s 10-11).

Based upon the foregoing findings of fact, the Court makes the following conclusions of law.

### **CONCLUSIONS OF LAW**

1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1345 and 1355. The United States has filed a Verified Complaint for Forfeiture In Rem to forfeit the defendant property consisting of firearms and ammunition, pursuant to 18 U.S.C. § 924(d)(1).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1355 and 1395, because the acts or omissions giving rise to the forfeiture occurred in and around Bozeman, Montana, and the defendant property is located in this district.

3. The Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure govern civil forfeiture actions. *United States v. 2659 Roundhill Drive*, 283 F.3d 1146, 1149 n.2 (9th Cir. 2002).

4. The Verified Complaint for Forfeiture in Rem sets forth detailed facts to

support a reasonable belief that the United States will be able to meet its burden of proof at trial as required by Supplemental Rule G(2)(f), to support probable cause, and to provide proof by a preponderance of the evidence to seize and arrest the defendant firearms and ammunition described in the Amended Verified Complaint.

5. Under 18 U.S.C. § 924(d), any firearm or ammunition involved or used in any violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 922(a)(1)(A), shall be subject to seizure and forfeiture.

6. The United States properly provided notice of this action to known potential claimants, Nolan Barbisan, Chris Kleppen, Danica Lewis, Michael McAulliffe, Mitchell Urdahl, Robert Wilkes, William Lewis, Patrick Pardy, Edward Wasson, Dennis Griffin, Linda Metcalf, Dustin Butler, David Barbisan, Austin King, Linda Waliser, Sam Wood, and Dennis Gentry, under Rule G(4)(b)(i) and (iii). The United States properly provided notice by publication to unknown potential claimants under Rule G(4)(a)(iv)(C). The Clerk of District Court properly entered the defaults of known and unknown potential claimants in accordance with Fed. R. Civ. P. 55(a) and Supplemental Rules A(2) and G(5). (Doc. 16, 21).

7. The United States is entitled to default judgment and Order of forfeiture against the following defendant firearms and ammunition and against any claims to

the defendant property under Fed. R. Civ. P. 55(b)(2):

1. DPMS INC. (Defense Procurement MFG. Services) A15 Rifle CAL:223 SN:FH194471;
2. Remington Arms Company, INC. 700 AAC-SD Rifle CAL:308 SN:G7060562;
3. Remington Arms Company, INC. 700 Rifle CAL:300 SN:S6582620;
4. Savage 111 Rifle CAL:300 SN:J070548;
5. Stiller's Precision Firearm, LLC (SPF) B-23 Rifle CAL: 6.5 Creedmore SN:PTG0106;
6. Browning X-Bolt Rifle CAL: 6.5 Creedmore SN:32978ZV354;
7. Winchester 70 Sporter Rifle CAL: 22-250 SN:G2081542;
8. Heckler and Koch P2000SK Pistol CAL:40 SN:1220-018076;
9. Smith & Wesson M&P 40 Pistol CAL:40 SN:CPD1616;
10. Smith & Wesson M&P 40C Pistol CAL:40 SN:DWS0526; and
11. Shadow Ops Weaponry, LLC SHDW-15BRifle CAL: Unknown, SN: 15B-4613.

**Ammunition:** 514 rounds of assorted multi-caliber ammunition; 19 rounds Smith & Wesson 40-caliber ammunition; and 6 rounds Speer 40-caliber ammunition.

8. The following persons are entitled to the return of firearms claimed as follows:

- **Dustin Butler** is entitled the his claim for the Gunwerks LLC LR-1000 Rifle CAL:22-243 SN:C2463;

- **David Barbisan** is entitled to his claim for the Remington Arms Company, Inc., 700 LH Rifle CAL:270 SN:A6827688, the Browning A-Bolt Rifle CAL:300 SN:36307MZ351, and the Smith & Wesson 657 Revolver CAL:41 SN:BHB5068;
- **Austin King** is entitled to his claim for the Ruger Mini 14 Ranch Rifle CAL:223 SN:187-00787;
- **Linda Waliser** is entitled to her claim for the Noble MFG. CO. 70D Shotgun CAL:410 SN: None;
- **Sam Wood** is entitled to his claim for the TIKKA (OY TIKKAKOSKI AB) T3 Rifle CAL:22-250 SN:J99220; and
- **Dennis Gentry** is entitled to his claim for the Winchester 70 Rifle CAL:300 SN:G2461760, and the Stiller's Precision Firearm, LLC (SPF) TAC338 G5 Receiver CAL: Unknown SN:TB31044.

Based upon the foregoing findings of fact and conclusions of law,

**IT IS ORDERED:**

1. The United States is granted a default judgment and order of forfeiture against the defendant firearms and ammunition, which are more particularly described as follows:

1. DPMS INC. (Defense Procurement MFG. Services) A15 Rifle  
CAL:223 SN:FH194471;
2. Remington Arms Company, INC. 700 AAC-SD Rifle CAL:308  
SN:G7060562;
3. Remington Arms Company, INC. 700 Rifle CAL:300 SN:S6582620;
4. Savage 111 Rifle CAL:300 SN:J070548; Stiller's Precision Firearm,  
LLC (SPF) B-23 Rifle CAL: 6.5 Creedmore SN:PTG0106;
5. Stiller's Precision Firearm, LLC (SPF) B-23 Rifle CAL: 6.5  
Creedmore SN:PTG0106;
6. Browning X-Bolt Rifle CAL: 6.5 Creedmore SN:32978ZV354;
7. Winchester 70 Sporter Rifle CAL: 22-250 SN:G2081542;
8. Heckler and Koch P2000SK Pistol CAL:40 SN:122-018076;
9. Smith & Wesson M&P 40 Pistol CAL:40 SN:CPD1616;
10. Smith & Wesson M&P 40C Pistol CAL:40 SN:DWS0526;  
SN:TB31044;
11. Shadow OPS Weaponry, LLC SHDW-15B Rifle CAL: Unknown  
SN:15B-4613; and

**Ammunition:** 514 rounds of assorted multi-caliber ammunition; 19 rounds Smith & Wesson 40-caliber ammunition; and 6 rounds Speer 40-caliber ammunition.

2. The defendant firearms and ammunition described above, are hereby  
forfeited to the United States and shall be disposed of in accordance with law.

3. The United States withdraws its claim for forfeiture on the following firearms and the ATF is hereby ordered to make available for release, the following firearms, to the following individuals:

1. Gunwerks LLC LR-1000 Rifle CAL:22-243 SN:C2463 to **Dustin Butler;**
2. Remington Arms Company, Inc., 700 LH Rifle CAL:270 SN:A6827688 to **David Barbisan;**
3. Smith & Wesson 657 Revolver CAL:41 SN:BHB5068 to **David Barbisan;**
4. Browning A-Bolt Rifle CAL:300 SN:36307MZ351, to **David Barbisan;**
5. Ruger Mini 14 Ranch Rifle CAL:223 SN:187-00787 to **Austin King;**
6. Noble MFG. CO. 70D Shotgun CAL:410 SN: None to **Linda Waliser;**
7. TIKKA (OY TIKKAKOSKI AB) T3 Rifle CAL:22-250 SN:J99220 to **Sam Wood;**
8. Winchester 70 Rifle CAL:300 SN:G2461760 to **Dennis Gentry;** and
9. Stiller's Precision Firearm, LLC (SPF) TAC338 G5 Receiver CAL: Unknown SN:TB31044, to **Dennis Gentry.**

**DATED** this 30<sup>th</sup> day of January, 2018.



**Sam E. Haddon**  
**United States District Judge**